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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,346	09/02/2005	Michael Grill	10191/4088	5758
26646 7590 06/27/2008 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				
EXAMINER				
LU, SHIRLEY				
ART UNIT		PAPER NUMBER		
2612				
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06/27/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/523,346

Applicant(s)

GRILL ET AL.

Examiner

SHIRLEY LU

Art Unit

2612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Allowable Subject Matter

Claim(s) 11, 18-20, 22-24 is/are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claim(s) 8-9, 16 is/are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 9, 11, 15, 17 of U.S. Application No. 10/522296.

Claim(s) 8 of this application conflict with claim(s) 9 of Application No. 10/522296. The limitations put forth in claim 9 of the application is a narrower version of the claimed limitations of claim 8 of the instant application, and therefore it would of been obvious to

one of ordinary skill of the invention of claim 8 of the instant application that it encompasses the invention of claim 9 of the application.

Claim(s) 9 of this application conflict with claim(s) 11 of Application No. 10/522296. The limitations put forth in claim 11 of the application is a narrower version of the claimed limitations of claim 9 of the instant application, and therefore it would of been obvious to one of ordinary skill of the invention of claim 9 of the instant application that it encompasses the invention of claim 11 of the application.

Claim(s) 16 of this application conflict with claim(s) 15 of Application No. 10/522296. The limitations put forth in claim 15 of the application is a narrower version of the claimed limitations of claim 16 of the instant application, and therefore it would of been obvious to one of ordinary skill of the invention of claim 16 of the instant application that it encompasses the invention of claim 15 of the application.

2. 10, 12-15, 17, 21 is/are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 9, 11, 15, 17 of U.S. Application No. 10/522296 in view of Klatt (7012529).

As to claim(s) 10, 17, 21,

The above claim(s) of 10/522296 does not expressly teach the optimum operating point includes an optimum engine efficiency.

Klatt discloses:

the optimum operating point includes an optimum engine efficiency ([2, 32-62]; For example, the optimal operating point depends on and is a function of the engine speed, as an instantaneous operating variable of the drive unit, and the optimal operating point is also determined as a function of the engine speed desired to be

output (output variable to be output by the drive unit) since "optimal operating point" correlates engine output point that yields optimized fuel economy as a target).

It would have been obvious to one of ordinary skill in the art to modify the above claim(s) of 10/522296 to teach the optimum operating point includes an optimum engine efficiency, so as to output a point that yields optimized fuel economy as a target.

As to claim(s) 12, Klatt discloses:

The above claim(s) of 10/522296 does not expressly teach the instantaneous operating variable includes an engine speed.

Klatt discloses:

the instantaneous operating variable includes an engine speed ([2, 32-45]).

It would have been obvious to one of ordinary skill in the art to modify the above claim(s) of 10/522296 to teach the instantaneous operating variable includes an engine speed, so as to utilize engine speed as a primary variable.

As to claim(s) 13, Klatt discloses:

The above claim(s) of 10/522296 does not expressly teach further comprising: determining the output variable as a function of a position of the control element.

Klatt discloses:

further comprising: determining the output variable as a function of a position of the control element (fig. 1; [2, 45-62]).

It would have been obvious to one of ordinary skill in the art to modify the above claim(s) of 10/522296 to teach further comprising: determining the output variable as a function of a position of the control element, so that the operator is continuously apprised of the appropriate degree of accelerator depression to attain optimum engine operating efficiency.

As to claim(s) 14, Klatt discloses:

The above claim(s) of 10/522296 does not expressly teach a haptic signaling starts approximately when the optimum operating point is reached.

Klatt discloses:

a haptic signaling starts approximately when the optimum operating point is reached ([2, 32-62]; restraining point).

It would have been obvious to one of ordinary skill in the art to modify the above claim(s) of 10/522296 to teach a haptic signaling starts approximately when the optimum operating point is reached, so that the operator is continuously apprised of the appropriate degree of accelerator depression to attain optimum engine operating efficiency.

As to claim(s) 15, Klatt discloses:

The above claim(s) of 10/522296 does not expressly teach further comprising: forming the haptic signal by a restoring force acting on the control element.

Klatt discloses:

urther comprising: forming the haptic signal by a restoring force acting on the control element (2, 32-62; restraining point).

It would have been obvious to one of ordinary skill in the art to modify the above claim(s) of 10/522296 to teach further comprising: forming the haptic signal by a restoring force acting on the control element, so that the operator is continuously apprised of the appropriate degree of accelerator depression to attain optimum engine operating efficiency.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shirley Lu whose telephone number is (571) 272-8546. The examiner can normally be reached on 8:30-5:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Bugg can be reached on (571) 272-2998. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SL

/George A Bugg/

Acting SPE of Art Unit 2612